

9 PERC ¶ 16043

RAMONA UNIFIED SCHOOL DISTRICT

California Public Employment Relations Board

**Ramona Teachers Association, Charging Party, v. Ramona Unified School District,
Respondent.**

Docket No. LA-CE-1896

Order No. 472

December 31, 1984

Before Hesse, Chairperson; Tovar and Burt, Members

Unfair Practice Procedures -- Deferral To Arbitration -- Determination --

71.811PERB general counsel erred in deferring to grievance arbitration with respect to teachers' union's unfair practice charge without providing union opportunity to rebut district's contention that issues in dispute were proper subjects of arbitration. Accordingly, matter was remanded for further investigation.

APPEARANCE:

Charles R. Gustafson, Attorney for Ramona Teachers Association.

DECISION AND ORDER

BURT, Member: The Ramona Teachers Association (Association) appeals the decision of the Public Employment Relations Board's regional attorney who refused to issue a complaint in the above-captioned case. The regional attorney dismissed charges that the Ramona Unified School District (District) violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA),¹ and deferred the resolution of those charges to the parties negotiated grievance procedure, pursuant to section 3541.5(a)(2).²

In deciding to defer, the regional attorney reviewed the contract and the substance of the charges and considered the District's letter expressing its willingness to proceed to arbitration on the issues it believed to be raised by the charges. The regional attorney apparently did not contact the attorney for the Association for his position on deferral, nor was the attorney for the Association aware of the contents of the District's letter concerning deferral.

On appeal, the Association argues that there is some conflict about the issues raised by the charges and the scope of the arbitration if the charges are deferred. While the result may ultimately be the same, we think it appropriate to remand to the general counsel for further investigation and consideration of the position of all parties in making a determination whether or not to defer. It is so ORDERED.

Member Tovar joined in this Decision.

¹ EERA is codified at Government Code section 3540 et seq.

² Section 3541.5(a)(2) provides in part:

Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following:

(2) issue a complaint against conduct also prohibited by the provisions of the

agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration. . . .

HESSE, Chairperson, dissenting: As the majority notes, the regional attorney dismissed the unfair practice charges, and deferred the resolution of those charges to binding arbitration. I fail to understand why the majority wishes to remand this case back to the General Counsel.

Section 3541.5(a)(2) prohibits the Board from issuing a complaint against conduct also prohibited by the provisions of the parties' agreement until the agreement's grievance machinery has been exhausted by either settlement or binding arbitration. (*Stockton Unified School District* (11/3/80) PERB Decision No. 143.) The parties' negotiated agreement culminates in binding arbitration in Article VIII, c., 5. On March 1, 1984, the District orally requested deferral. That request was followed up on March 13, 1984, in a letter in which the District stated it was ready and willing to proceed to arbitration on all the issues, waiving all procedural defenses.

For the reasons set out in the regional attorney's dismissal letter, the Board may then review the arbitration award to determine if it is repugnant to the purposes of EERA. Therefore, because a legitimate request for deferral was made by the responding party, such deferral is completely appropriate in this case.

Furthermore, the majority argues that, because the regional attorney failed to notify the Association's attorney of the District's request, the regional attorney erred. Although PERB Regulation 32620(b)(4) gives the Board agent the power and duty to make inquiries to determine whether the charge is subject to deferral to arbitration, there is no duty to contact the Association's attorney prior to deferring the charge. The Association fails to show how it was prejudiced. The regional attorney did notify the charging party of his determination. Thus, a remand is not appropriate in this case.
